SUPREME COURT OF THE UNITED STATES.

No. 731.—October Term, 1931.

Samuel S. Koenig, John J. Knewitz, and William L. Ward, Petitioners, *vs.* Edward J. Flynn, Secretary of State of the State of New York, et al.	On Writ of Certiorari to the Supreme Court of the State of New York.

[April 11, 1932.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The petitioners, 'citizens and voters' of the State, sought a writ of mandamus to compel the Secretary of State of New York, in issuing certificates for the election of representatives in Congress, to certify that they are to be elected in the congressional districts defined in the concurrent resolution of the Senate and Assembly of the State, adopted April 10, 1931. The Secretary of State, invoking the provisions of Article I, section 4, of the Constitution of the United States, and those of the Act of Congress of August 8, 1911, c. 5, 37 Stat. 13, and also the requirements of the constitution of the State in relation to the enactment of laws, alleged that the concurrent resolution in question was ineffective, as it had not been submitted to the Governor for approval and had not been approved by him. The Court of Appeals of the State, construing the Federal constitutional provision as contemplating the exercise of the lawmaking power, sustained the respondent's defense and affirmed the decision of the lower courts refusing the writ. 258 N. Y. 292. This Court granted a writ of certiorari.

The State of New York, under the reapportionment pursuant to the Act of Congress of June 18, 1929, c. 28, 46 Stat. 21, 26, is entitled to forty-five representatives in Congress in place of forty-three, the number allotted under the previous apportionment. The Court of Appeals decided that, in the absence of a new districting statute dividing the State into forty-five congressional

districts, forty-three representatives are to be elected in the existing districts as defined by the state law, and the two additional representatives by the State at large.

For the reasons stated in the opinion in No. 617, *Smiley* v. *Holm*, decided this day, the judgment is affirmed.

Judgment affirmed.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.